REMARKS

Claims 1-21 are pending in Application Serial No. 10/533,180 filed on April 29, 2005. A third Office Action was mailed on March 31, 2009.

In the third Office Action, the Examiner rejected Claims 1-21. More particularly, the Examiner rejected Claims 5 and 10 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. The Examiner rejected Claims 1-4, 6, 8-11, 13, 16-18 and 20-21 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,420,671 to Hess et al. ("the Hess '671 Patent") in view of U.S. Patent No. 4,012,535 to Fiala et al. ("the Fiala '535 Patent"). The Examiner rejected Claim 5 under 35 U.S.C. §103(a) as being unpatentable over the Hess '671 Patent in view of the Fiala '535 Patent and U.S. Patent No. 2,143,835 to Smith et al. ("the Smith '835 Patent"). Claim 7 was rejected by the Examiner under 35 U.S.C. §103(a) as being unpatentable over the Hess '671 Patent in view of the Fiala '535 Patent and U.S. Patent No. 2,091,284 to Kieter ("the Kieter '284 Patent"). The Examiner rejected Claims 12, 14-15 and 19 under 35 U.S.C. §103(a) as being unpatentable over the Hess '671 Patent in view of the Fiala '535 Patent and U.S. Patent No. 6,579,552 to Myhre ("the Myhre '552 Patent").

Based on the foregoing amendments and the remarks set forth below, it is believed that the Examiner's rejections under 35 U.S.C. §112, second paragraph and §103(a) have been overcome and Claims 1-21 are now in condition for allowance.

REJECTIONS UNDER 35 U.S.C. §112

The Examiner rejected Claims 5 and 10 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter. More particularly, the Examiner rejected Claim 5 because the phrase "juice is extracted, concentrated and stored in liquid concentrate tank(s)" in lines 1-2 was vague and indefinite

since it is unclear what the juice is being extracted from. Applicant has amended Claim 5 to more particularly point out and distinctly claim Applicant's invention. More specifically, Applicant has amended Claim 5 to read "juice from said legume fodder crop is extracted, concentrated and stored in liquid concentrate tank(s)". Support for the amendment can be found in the Specification at least at paragraph [0114].

Based on the foregoing amendment, Applicant respectfully submits that Claim 5 is now in condition for allowance.

The Examiner rejected Claim 10 because the phrase "such as ..." in lines 2-4 renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. Applicant has amended Claim 10 to more particularly point out and distinctly claim Applicant's invention. More specifically, Applicant has amended Claim 10 to read "including..." in lines 2-4. Support for the amendment can be found in the specification at least at paragraph [0086].

Based on the foregoing amendment, Applicant respectfully submits that Claim 10 is now in condition for allowance.

REJECTIONS UNDER 35 U.S.C. §103(a)

The Examiner rejected Claims 1-4, 6, 8-11, 13, 16-18 and 20-21 under 35 U.S.C. §103(a) as being unpatentable over the Hess '671 Patent in view of the Fiala '535 Patent.

Independent claims 1, 11, 16 and 18 have been amended in order to more particularly point out and distinctly claim Applicant's invention. Applicant respectfully submits that the Hess '671 Patent and the Fiala '535 Patent do not, either alone or in combination with one another, teach or even suggest Applicant's invention as set forth in independent Claims 1, 11, 16 and 18, respectively.

"In rejecting claims under 35 U.S.C. §103, the [E]xaminer bears the initial burden of presenting a prima facie case of obviousness. Only if that burden is met, does the burden of coming forward with evidence or argument shift to the applicant." *In re Rijckaert*, 9 F.3d 1531, 1532 (Fed. Cir. 1993)(citations omitted). In order to determine whether a prima facie case of obviousness has been established, we consider the factors set forth in *Graham v. John Deere Co.*: (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; (3) the level of ordinary skill in the relevant art; and (4) objective evidence of the nonobviousness, if present. *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1996). When evaluating a claim for determination of obviousness, all limitations of the claim must be evaluated in judging the patentability of the claim against the prior art. *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970); MPEP 2143.03.

Neither the Hess '671 Patent nor the Fiala '535 Patent teach or even suggest all of the limitations of independent Claims 1, 11, 16 and 18. More particularly, Neither the Hess '671 Patent nor the Fiala '535 Patent teach or even suggest: a) growing the legume fodder crop as a soil enhancing fallow crop for sugar cane, b) providing a cane sugar mill and a feed mill, the feed mill being located at or adjacent to the cane sugar mill, or c) drying the shredded material using heat supplied by the cane sugar mill or from by-products of the cane sugar mill to produce a dried animal feed material, suitable for long term storage. The Examiner states in the Office Action that the Hess '671 Patent:

> fails to expressly disclose: "providing a cane sugar mill"; "providing a feed mill, said feed mill being located at/adjacent to said cane sugar mill"; "delivering without minimum delay, freshly harvested legume fodder crop to a said feed mill located at/adjacent to a said cane sugar mill"; and "drying the shredded material using heat supplied by the cane sugar mill or from by-products of the cane sugar mill to produce a dried animal feed material, suitable for long term storage".

The Examiner also states in the Office Action that the Fiala '535 Patent teaches drying feed material for the purpose of providing high density dry feed. However, the Fiala '535 Patent

clearly does not teach or suggest drying the shredded material using heat supplied by the cane sugar mill or from by-products of the cane sugar mill. Nor does it teach or suggest providing a cane sugar mill and a feed mill, the feed mill being located at/adjacent to the cane sugar mill. Nor does it teach or even suggest growing the legume fodder crop as a soil enhancing fallow crop for sugar cane. Because neither the Fiala '535 Patent nor the Hess '671 Patent, either alone or in combination with one another, teach or even suggest all of the limitations set forth in Applicant's invention, they do not render Applicant's invention obvious.

The Examiner argues that "...with respect to the relative locations of the sugar cane and feed mill and legume fodder field, where the source of heat comes from and what type of equipment is used to transport the material to the mill does not have any material affect on the method of processing legume fodder. Whether the locations next to each other, separated by a warehouse, road, are ten miles apart or 100 miles apart or there is not a cane sugar mill at all does not make any difference to the method of processing the legume or affect the product being produced. Whether the heat source comes from a sugar cane mill or from a gas fired boiler makes no difference to the method of processing the legume fodder (emphasis added)."

However, it is clear from newly amended independent Claim 1, which reads in relevant part: "A method for growing and processing a legume fodder crop and a sugar cane crop, including the steps of:...a) providing a cane sugar mill; b) providing a feed mill, said feed mill being located at or adjacent to said cane sugar mill; c) growing said legume fodder crop as a soil enhancing fallow crop for sugar cane to be processed at said cane sugar mill; ....and f) drying the shredded material using heat supplied by the cane sugar mill or from by-products of the cane sugar mill to produce a dried animal feed material, suitable for long term storage", that those requirements are essential to Applicant's invention. (Similar language also appears in Claims 11, 16 and 18.) The Examiner's assertion that: the source of the heat,

whether there is a sugar cane mill present or not, and whether the heat used to dry the shredded material comes from a sugar cane mill makes no difference to the method of processing the legume fodder crop, is incorrect in view of the new amendments to the claims.

Based on the foregoing, it is clear that Applicant's invention is not taught or even suggested by either the Hess '671 Patent or the Fiala '535 Patent, either alone or in combination with one another and those references do not render Applicant's claimed invention obvious.

The Examiner further states that: "It would have been obvious to a person having ordinary skill in the art to use the least expensive energy source and consider all options available and if the least expensive source is from a neighboring mill then it would have been obvious to use it." However, such expansive obvious to try language has been repeatedly rejected by the courts. In *KSR Int'l v. Teleflex Inc.*, the Supreme Court provided a framework for the limited circumstances where an obvious to try doctrine would be proper: "When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show that it was obvious under §103." *KSR*, 127 S.Ct. 1727, 1732 (2007).

In the present case, the Examiner has failed to show that "a) growing the legume fodder crop as a soil enhancing fallow crop for sugar cane, b) providing a cane sugar mill and a feed mill, the feed mill being located at or adjacent to the cane sugar mill, and c) drying the shredded material using heat supplied by the cane sugar mill or from by-products of the cane sugar mill to produce a dried animal feed material, suitable for long term storage" are within a finite number of identified, predictable solutions of one having ordinary skill in the art. In

fact, these particular limitations are never mentioned in any reference cited by the Examiner. Nor would they arise as a natural result of anything taught or suggested in either the Hess '671 Patent or the Fiala '535 Patent.

Based on the foregoing, it is clear that neither the Hess'671 Patent nor the Fiala '535 Patent teach or even suggest applicant's invention. Therefore, Applicant's invention is not obvious under 35 U.S.C. §103(a) and it is respectfully submitted that independent Claims 1, 11, 16 and 18 are now in condition for allowance.

Because Claims 2-10, 12-15, 17 and 19 depend either directly or indirectly from allowable independent Claims 1, 11, 16 and 18, they too are believed to be in condition for allowance.

The Examiner rejected Claim 5 under 35 U.S.C. §103(a) as being unpatentable over the over the Hess '671 Patent in view of the Fiala '535 Patent and the Smith '835 Patent. Claim 5 depends directly from allowable Claim 1. As set forth above, Applicant respectfully submits that Claim 1 is now in condition for allowance. Because Claim 5 depends directly from allowable Claim 1, it too is believed to be in condition for allowance.

The Examiner rejected Claim 7 under 35 U.S.C. §103(a) as being unpatentable over the Hess '671 Patent in view of the Fiala '535 Patent and the Kieter '284 Patent. Claim 7 depends indirectly from allowable Claim 1. As set forth above, Applicant respectfully submits that Claim 1 is now in condition for allowance. Because Claim 7 depends indirectly from allowable Claim 1, it too is believed to be in condition for allowance.

The Examiner rejected Claims 12, 14-15 and 19 under 35 U.S.C. §103(a) as being unpatentable over the Hess '671 Patent in view of the Fiala '535 Patent and the Myhre '552 Patent. Claims 12, 14-15 and 19 depend either directly or indirectly from Claim 11 or Claim 18. For the reasons set forth above, Applicant respectfully submits that Claims 11 and 18 are in condition for allowance. Because Claims 12, 14-15 and 19 depend either directly or

indirectly from allowable Claim 11 or allowable Claim 18, they too are now in condition for allowance.

In view of the above, it is submitted that the claims now are in condition for allowance, and reconsideration of the rejections is respectfully requested and allowance of Claims 1-21 at an early date is hereby respectfully solicited.

Respectfully submitted,

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